

**Robert I. Sanders, OSB 70125**

Email: ris@woodtatum.com

**Todd A. Zilbert, OSB No. 89144**

Email: taz@woodtatum.com

**Wood Tatum**

6915 SW Macadam Avenue, Suite 115

Portland, Oregon 97219

Tel: (503) 224-5430

Fax: (503) 241-7235

**George M. Chalos** (*admitted pro hac vice*)

Email: gmc@chaloslaw.com

**Chalos & Co, P.C.**

123 South Street

Oyster Bay, New York 11771

Telephone: (516) 714-4300

Facsimile: (516) 750-9051

Attorneys for Plaintiffs  
OS Shipping Co. Ltd., and  
Assuranceforenigen Skuld (Gjensidig)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**OS SHIPPING CO. LTD., and**  
**ASSURANCEFORENIGEN SKULD**  
**(GJENSIDIG), on its behalf and as subrogee of**  
**OS SHIPPING CO. LTD.,**

Plaintiffs,

v.

**GLOBAL MARITIME TRUST(S) PRIVATE**  
**LIMITED, JS LINE SA, and HONG JAE)**  
**HYUNG a/k/a JAY H. HONG**

Defendants.

Case No. Case No. 3:11-cv-377-BR

**IN ADMIRALTY**

**PLAINTIFF'S MEMORANDUM IN**  
**SUPPORT OF MOTION TO APPROVE**  
**CERTAIN FEES AS CUSTODIA LEGIS**  
**EXPENSES**

1  
2 **INTRODUCTORY STATEMENT**

3 COMES NOW, ASSURANCEFORENIGEN SKULD (GJENSIDIG) (hereinafter  
4 “SKULD” or “Plaintiff”), by and through undersigned counsel, and submits this Memorandum of  
5 Law in Support of the motion to approve certain fees as *custodia legis* expenses. For the reasons  
6 more fully set forth below and in the accompanying Declaration of George M. Chalos, Plaintiff  
7 respectfully requests that this Honorable Court enter an Order granting the motion.  
8

9 **RELEVANT PROCEDURAL AND FACTUAL BACKGROUND**

10 1. The M/V GMT VENUS was attached by the United States Marshal for the District of  
11 Oregon, pursuant to an Order authorizing process of maritime attachment and garnishment on March  
12 28, 2011. *See* Docket #8 and Docket #9.

13 2. The Honorable Judge Garr M. King issued an Order for appointment of the substitute  
14 custodian on March 28, 2011, directing the United States Marshal for the District of Oregon to  
15 transfer custody of the M/V GMT VENUS following her attachment to the substitute custodian,  
16 Cascade Marine Agencies (“Cascade”). *See* Docket #7. Specifically, the Order provided, *inter alia*,  
17 as follows:  
18

19 ...that all expenses from the date of service of the Writ of Attachment  
20 to the date of release from custody of the Court, including any and all  
21 expenses of the substitute custodian, shall be deemed administrative  
22 expenses of the U.S. Marshal...

23 *See* Docket #7.

24 3. The M/V GMT VENUS is currently in the custody of the substitute custodian  
25 Cascade in the District of Oregon.

26 4. JSL filed a Motion to Dismiss and Motion to Vacate attachment on March 31, 2011.  
*See* Docket #21.

7. Of the invoices presented, the services which are properly *custodia legis* expenses currently total **USD 105,706.93**<sup>1</sup>. Specifically, the following custodial services have been provided to the M/V GMT VENUS through May 12, 2011: Columbia River Pilots (USD 1402.67); Shaver Transportation – Tug (USD 9,165.26); Port of Portland – Dockage & Security T-6 (USD 11,876.00); Port of Portland – Dockage & Security T-4 (USD 81,055.00); Portland Lines Bureau (USD 2,208.00). *Copies of these invoices are attached to the George M. Chalos Declaration as Exhibit 1.*

8. Plaintiff SKULD is willing, ready, and able to pay for the outstanding invoices that are *custodia legis* expenses, in the first instance.

9. Plaintiff respectfully requests this Honorable Court issue an order approving the *custodia legis* fees.

### A. The District Court has the Authority to Designate *Custodia Legis* Expenses

*Custodia legis* expenses are defined as expenses incurred “when a vessel is in the custody of

<sup>1</sup> Also included among the invoices were costs and fees that are not *custodia legis* expenses. The following items are operational costs which are properly for the account of the Owners of the M/V GMT VENUS: Executive Marine Courier (USD 265.00); Executive Security Service (USD 176,640.00); and Agency Fee (USD 4,380.00). The four (4) armed security guards provided by Executive Security Service are required to remain on board at the direction of the U.S. Coast Guard and in accordance with the Captain of the Port Order of March 25, 2011. The courier costs, agency fees, and security guard costs are not *custodia legis* expenses incurred to preserve and maintain the value of the vessel. Rather, these are operational costs which are properly for the account of the vessel Owners.

1 the law, having been seized by the Marshal.” *United States v. One (1) 254 Ft. Freighter, the M/V*  
 2 *Andoria*, 570 F. Supp. 413, 416 (E.D. La. 1983) (*internal citations omitted*). Only expenses “for  
 3 services or property furnished [to a vessel] after its seizure by the U.S. Marshal...can be considered  
 4 to have been incurred while the vessel was *in custodia legis*.” *Fortis Bank (Nederland) N.V. v. M/V*  
 5 *Shamrock*, 379 F. Supp. 2d 2, 8 (D. Me. 2005) (citing *One (1) 254 Ft. Freighter, the M/V Andoria*,  
 6 570 F. Supp. at 416); *see also Morgan Guaranty Trust Co. v. Hellenic Lines, Ltd.*, 593 F. Supp.  
 7 1004, 1010 (S.D.N.Y. 1984)(“Services or property advanced to preserve and maintain the arrested  
 8 vessels, furnished upon authority of the court, are allowable as *custodia legis* expenses.”)

10 It is a well-settled principle that “in order to qualify for preferential treatment as an expense  
 11 *in custodia legis*, an expense must be incurred upon the authority of the court or its officer, and be  
 12 for the common benefit of those interested in [the] fund.” *Fortis Bank (Nederland) N.V. v. M/V*  
 13 *Shamrock*, 379 F. Supp. 2d 2, 8 (D. Me. 2005) (citing *Oil Shipping (Bunkering) B.V. v. Sonmez*  
 14 *Denizcilik Ve Ticaret A.S.*, 10 F.3d 176, 182 (3d Cir. 1993)); *see also Barwil ASCA v. M/V SAVA*, 44  
 15 F. Supp. 2d 484, 489 (E.D.N.Y. 1999) (Court granted Plaintiff’s request for reimbursement of  
 16 expenses *in custodia legis*, specifically US Marshal fees and payments to substitute custodian.)

18 The general rule is that no liens may accrue against a vessel once she has been attached or  
 19 arrested. An exception, arising out of equitable province of the court, applies to any service  
 20 furnished to a vessel, while in the court’s custody, that contributes to the preservation of the value of  
 21 the asset or the creation of fund from the vessel’s sale. *See Transamerica Commercial Finance v.*  
 22 *F/V SMILELEE*, 944 F.2d 186, 189 (4th Cir. 1991) (citing *New York Dry Dock v. S/S POZNAN*, 274  
 23 U.S. 117, 122-23, 71 L. Ed. 955, 47 S. Ct. 482 (1927) (“The most elementary notion of justice would  
 24 seem to require that services or property furnished upon the authority of the court or its officer,  
 25  
 26

1 acting within his authority, for the common benefit of those interested in a fund administered by the  
 2 court, should be paid from the fund as an ‘expense of justice.’”).

3 This general rule has long been recognized by the Ninth Circuit Court of Appeals and the  
 4 district courts herein. “The custodial court *must* have the power to incur debts and to guarantee their  
 5 repayment.” *United States v. The Audrey II*, 185 F. Supp. 777, 781 (N.D. Cal. 1960) (emphasis  
 6 added) (citing *New York Dry Dock*, 274 U.S. at 122.) Not only are custodial courts capable of  
 7 creating liens, but the *in custodia legis* doctrine affords the district court the equitable authority to  
 8 recognize and honor the claims which arise during the vessel’s custody. *Id.* (citing *The Willamette*  
 9 *Valley*, 66 F. 565, 568 (9th Cir. 1895)).

#### 11 **B. Custodia Legis Expenses Incurred by M/V GMT VENUS**

12 In the instant matter, *custodia legis* expenses in an amount of USD **105,706.93** have been  
 13 incurred during the vessel’s attachment at the port of Portland, through May 12, 2011, and continue  
 14 to accrue daily. Plaintiff respectfully submits that given the considerable costs accruing daily, and  
 15 that these expenses are being incurred to maintain and preserve the value of the asset, it is  
 16 appropriate for this Honorable Court to designate same as *custodia legis* expenses.

17 In order to avoid any risk of not being given first priority to reimbursement for these  
 18 necessary preservation and maintenance costs following the judicial sale of the vessel, Plaintiff  
 19 respectfully seeks the preemptive designation of the costs and fees as *custodia legis* expenses by  
 20 Your Honor. See *Dresdner Bank AG v. M/V Olympia Voyager*, 465 F.3d 1267, 1273 (11th Cir.  
 21 2006) (quoting *Bassis v. Universal Line, S. A.*, 484 F.2d 1065, 1068 (2d Cir. 1973) (“[T]hose  
 22 furnishing custodial services to a ship *in custodia legis* are gambling on a wholly unpredictable  
 23 result unless they take the precaution of having their services authorized in advance by an order of  
 24  
 25  
 26

1 the custodial court.” (internal quotation marks omitted)); *Payne v. S.S. Tropic Breeze*, 423 F.2d 236,  
 2 239 (1st Cir. 1970) (“Expenditures while a ship is *in custodia legis* do not give rise to maritime  
 3 liens. . . . [But] a district court, sitting in admiralty, has the equitable power to give priority to [such]  
 4 claims.”).

5 The Supreme Court has long recognized, “equity is no stranger in admiralty; admiralty courts  
 6 are, indeed, authorized to grant equitable relief.” *Vaughan v. Atkinson*, 369 U.S. 527, 530 (1962)  
 7 (citing *Swift & Co. v. Compania Caribe*, 339 U.S. 684, 691-692 (1950)). In *Swift & Co. v.*  
 8 *Compania Caribe*, the Supreme Court stated that it “find[s] no restriction upon admiralty by  
 9 chancery so unrelenting as to bar the grant of any equitable relief even when that relief is subsidiary  
 10 to issues wholly within admiralty jurisdiction.” 339 U.S. at 691-692.

## 12 CONCLUSION

13 For the foregoing reasons, Plaintiff SKULD respectfully requests that this Court: (i) grant the  
 14 instant motion to approve the fees and expenses totaling **USD 105,706.93** that have accrued to  
 15 maintain the vessel as *custodia legis* expenses, and (ii) award such other and further relief as it  
 16 deems just and proper, under the circumstances.

17 DATED this 12th day of May, 2011.

18 **Respectfully Submitted,**

19 WOOD TATUM

20 /s/ Robert I. Sanders

21 Robert I. Sanders OSB No. 70125

22 Email: ris@woodtatum.com

23 6915 SW Macadam Avenue, Suite 115

24 Portland, Oregon 97219

25 Tel: (503) 224-5430

26 Fax: (503) 241-7235

CHALOS & CO, P.C.

/s/ George M. Chalos

George M. Chalos (*admitted pro hac vice*)

123 South Street

Oyster Bay, New York 11771

Tel: (516) 714-4300

Fax: (516) 750-9051

E-mail: [gmc@chaloslaw.com](mailto:gmc@chaloslaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE CERTAIN FEES AS CUSTODIA LEGIS EXPENSES** on the following parties:

C. Kent Roberts  
Noah Jarrett  
Catherine Brinkman  
SCHWABE, WILLIAMSON & WYATT, PC  
1211 Southwest Fifth Avenue  
Suites 1600-1900  
Portland, OR 97204  
Email: [njarrett@schwabe.com](mailto:njarrett@schwabe.com)  
[cbrinkman@schwabe.com](mailto:cbrinkman@schwabe.com)  
[ckroberts@schwabe.com](mailto:ckroberts@schwabe.com)

Owen F. Duffy  
Email: [ofduffy@gmail.com](mailto:ofduffy@gmail.com)  
**Attorneys for Defendant JSL SA**

Carl R. Neil  
LINDSAY HART NEIL & WEIGLER  
1300 SW Fifth Avenue, Suite 3400  
Portland, OR 97201-5640  
Email: [cneil@lindsayhart.com](mailto:cneil@lindsayhart.com)  
**Attorneys for Cargo Owner Hyundai Motor America Corporation**

by CM/ECF a true and correct copy hereof to said parties on the date below:

DATED this 12th day of May, 2011.

CHALOS & CO, P.C.

/s/ George M. Chalos  
George M. Chalos (*admitted pro hac vice*)  
123 South Street  
Oyster Bay, New York 11771  
Telephone: (516) 714-4300  
Fax: (516) 750-9051  
E-mail: [gmc@chaloslaw.com](mailto:gmc@chaloslaw.com)  
Attorneys for Plaintiffs

CHALOS & CO, P.C.  
123 South Street  
Oyster Bay, New York 11771  
Telephone: (516) 714-4300